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Honorable Alexander C Ekstrom

5  
6 UNITED STATES DISTRICT COURT,  
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF  
8 AMERICA,

9 Plaintiff,

10 vs.

11 JOSE ANTONIO GUZMAN-  
GARCIA,

12 Defendant.

NO. ` 4:24-CR-06031-MKD (2)

DEFENDANT'S MOTION FOR  
IMMEDIATE RELEASE FROM  
PRETRIAL DETENTION WITH  
CONDITIONS

13 **Hearing: 1/14/2025 @ 10:00 a.m.,**  
14 **in Richland, Washington**

15 Defendant JOSE ANTONIO GUZMAN-GARCIA, by his attorney, J. Gregory  
16 Lockwood, respectfully requests that this Court order his release from custody  
17 pursuant to the Bail Reform Act (BRA) and the Fifth Amendment's Due Process  
18 Clause. A hearing for pre-trial detention is governed by the Bail Reform Act of  
19 1984 – 18 USC 3142.

20 It is recognized that detention hearings are an informal proceeding, and the  
evidence presented is not governed by the Federal Rules of Evidence." *United*

1 *States v. Duncan*, 897 F. Supp. 688, 690 (N.D.N.Y. 1988); 18 U.S.C. § 3142(f)(2).

2 As such the parties may proceed in a detention hearing by way of proffer. *United*  
3 *States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986).

4 Here, 18 U.S.C. § 3142(e), contains a rebuttable presumption that "no  
5 condition or combination of conditions" will (1) "reasonably assure" the safety of  
6 any other person and the community if the defendant is released; or (2) "reasonably  
7 assure" the appearance of the defendant as required *and* (3) "reasonably assure" the  
8 safety of any other person and the community if the defendant is released.

9 In a pretrial detention hearing, the government has the initial burden to  
10 establish by clear and convincing evidence that no conditions of release will  
11 reasonably assure the safety of the community. *United States v. Orta*, 760 F.2d  
12 887 (8th Cir. 1985). Here, the issue in such a hearing is whether releasing a  
13 defendant would pose a danger to the community that would not exist were Mr.  
14 Guzman-Garcia is detained. *United States v. Phillips*, 732 F. Supp. 255, 267  
15 (D.Mass. 1990), *reh'g denied*, 952 F.2d 591 (1st Cir.), *cert. denied*, 113 S.Ct. 113  
16 (1992), As to the issue of risk of flight the standard is different. Regarding this  
17 issue the government need only prove that there are no such conditions by a  
18 "preponderance of the evidence. *United States v. Martir*, 782 F.2d 1141, 1146 (2d  
19 Cir. 1986)); 18 U.S.C. § 3142(c).

1 The government's burden is only to prove either a flight risk or a danger to the  
2 community to warrant detention. *United States v. Flores*, 856 F. Supp. 1400, 1401  
3 (E.D.Cal. 1994). However, Mr. Guzman-Garcia only bears a limited burden of  
4 production, not a burden of persuasion. Even in a presumption case as here, the  
5 government retains the ultimate burden of persuasion. *United States v. Mercedes*,  
6 254 F.3d 433, 436 (2d Cir. 2001); also see *United States v. Hare*, 873 F.2d 796,  
7 799 (5th Cir. 1989).

8 If as in this case the presumption is invoked, very little is required by Mr.  
9 Guzman-Garcia who need only present some credible evidence to show he is not a  
10 flight risk or danger to community. *United States v. Perry*, 788 F.2d 100 (3d Cir.  
11 1986); *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986).

12 Some of the factors the court may consider:

- 13 1. Nature and seriousness of offense – Mr. Guzman-Garcia has been  
14 charged with conspiracy and possession with intent to distribute  
15 Fentanyl. There is no allegation of violence or firearms in  
16 conjunction with these charges.
- 17 2. History/characteristics of defendant – Mr. Guzman-Garcia is 46  
18 years old and was born in Mexico but has lived in the United  
19 States since 2009. He has no criminal history except for a  
20 deportation back to Mexico. He has worked and has been law

1 abiding in this country for 15 years. Mr. Guzman-Garcia went as  
2 far as forming a Limited Liability Company (LLC) with the State  
3 of Washington under the name Garcia's Masonry LLC. This  
4 company has operated in the Tri-cities area.

5 Mr. Guzman-Garcia has been in a long time relationship with Ms.  
6 Mayra Ozuna and they have a 4 year old daughter (Aliana). Both  
7 Ms. Mayra Ozuna and their daughter reside in Prosser,  
8 Washington.

9 Mr. Guzman-Garcia has three sisters who all reside in the Tri-  
10 Cities area. Both of his parents have passed away;

11 Mr. Guzman-Garcia has a very close relationship with his sisters,  
12 Ms. Ozuna and their daughter,

13 3. Criminal history – Mr. Guzman-Garcia has no prior criminal  
14 history;

15 4. History of court appearances/probation record – Mr. Guzman-

16 5. Garcia has no history of failing to appear for any court hearing;

17 6. Community ties - Mr. Guzman-Garcia has been in the United States  
18 for 15 years and is a long term relationship with Mayra Ozuna and  
19 they have a 4 year old daughter (Aliana). Mr. Guzman-Garcia has  
20 three sisters and cousins who all live in the Tri-Cities area. Mr.

1 Guzman-Garcia has no ties to Mexico except for an older brother who  
2 resided in Mexico; and

3 7. .Employment – Mr. Guzman-Garcia has worked and established  
4 himself in the area as a mason. Under his business name of Garcia’s  
5 Masonry LLC.

6 Mr. Guzman-Garcia submits his pretrial release plan as follows:

7 Mr. Guzman-Garcia will reside with his sister Mrs. Karla Walter and her  
8 husband Jared at their residence in Kennewick, Washington located at 2012 W.  
9 12<sup>th</sup> Ave, Kennewick, Washington 99337. Mr. Guzman-Garcia will continue to  
10 work while keeping the United States Probation informed of his jobs. Additional  
11 conditions such as electronic monitoring can be imposed if the court deems  
12 necessary.

13 Mr. Guzman-Garcia believes the courts’ standard conditions for release  
14 together with drug testing would be sufficient in this case. Further, Mr. Guzman –  
15 Garcia intends to turn over any passport to United States Probation prior to release.

16 It should be noted that courts have found that a Defendant’s promise to  
17 appear with a reasonable pretrial plan is sufficient to rebut the presumption. *United*  
18 *States v. Walters*, 89 F. Supp. 2d 1217, 1219-22 (D. Kan. 2000)

19 Further, the court in making its determination must reject the government’s  
20 argument that implies guilt as it is strictly prohibited by the Bail Reform Act. 18

1 U.S.C. § 3142(j). And that the “weight of the evidence is the least important of the  
2 various factors.” *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985).  
3 And, even in a presumption case as here, the Bail Reform Act contains a least  
4 restrictive conditions requirement.” 18 U.S.C. § 3142(c)(1).

5 It is respectfully requested that the court after considering the above  
6 Defendant’s proofer that the court grant Mr. Guzman-Garcia’s motion for release  
7 and order the “least restrictive conditions requirement” of 18 U.S.C. § 3142(c)(1).

8 Dated this 11<sup>th</sup> day of December 2024

9 // J. Gregory Lockwood  
10 J. Gregory Lockwood,  
11 WSBA No. 20629  
12 Attorney for Mr. Guzman-Garcia  
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CERTIFICATE OF SERVICE

I, J. Gregory Lockwood, hereby certify that on December 11, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Lisa C Cartier-Girouz Assistant United States Attorney, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: none.

Dated this 11<sup>th</sup> day of December, 2024

/s/ J. Gregory Lockwood  
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